

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1347 of 1998

in

SPECIAL CIVIL APPLICATION No 1319 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT DEVELOPMENT OFFICER

Versus

GUNVANTBHAI CHANDULAL KACHHIYA

Appearance:

MR RA MISHRA for Appellant

MR AS SUPEHIA for Respondent No. 1

MR AJ DESAI for Respondent No. 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE D.A.MEHTA

Date of decision: 20/09/2000

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

Admit. Mr. A.S. Supehia and Mr. A.J. Desai, learned Counsel for the respondents No.1 and 2 respectively, waive service of notice. At the instance of both the sides, the matter is taken up for final disposal.

It appears from the record that the only controversy which should have been gone into was as to whether there was a mistake in including the name of the respondent No.1 in the list of employees who were given higher grade pay-scale. As recorded by the Tribunal in paragraph 6 of its order, the DDO after the process of selection had specifically excluded the name of the respondent No.1 while awarding the higher grade pay-scale. According to the appellant, despite the exclusion of the name of the respondent No.1 by the DDO his name mistakenly appeared in the list of those who had been sanctioned the higher grade pay-scale under the order dated 15.11.1994 and when the mistake was discovered, a corrigendum came to be issued on 30.1.1995. It is clear that before the Tribunal the only question which was material, apart from the delay aspect, was as to whether there was a clerical mistake committed in including the name of the respondent No.1 in the list of those who were sanctioned the higher grade pay-scale. The learned Single Judge however, went into the question of the adverse remarks for various years preceding the grant of the said higher grade pay-scale and on the basis of remoteness, gave a direction to ignore the confidential reports of the respondent No.1 for the period between 13.5.1982 and 31.3.1985. Such an exercise was not called for in view of the fact that the only controversy which was raised was whether the name of the respondent No.1 was mistakenly included in the list and whether it was necessary to hear the respondent No.1 before issuing the corrigendum which had the effect of removing his name from the list. This is more so in view of the fact that there was no material on record to indicate as to what aspects were gone into by the District Development Officer who had made the selection for the purpose of excluding the name of the respondent No.1. The order of the learned Single Judge therefore cannot be sustained on that aspect.

The learned Counsel appearing for the appellant did not dispute that before removing the name of the respondent No.1 he ought to have been heard. It is

obvious that after the order dated 15.11.1994 sanctioning higher grade pay-scale was issued, which had the effect of award of that pay-scale to the employees mentioned in the list including the respondent No.1, amendment of that order which was made on 31.1.1995 had the effect of removing the respondent No.1 from that list and therefore, it was incumbent on the appellant to hear the respondent No.1 before making such an order even on the ground as to whether his name was mistakenly included in the list.

The appeal is therefore partly allowed and the order of the Tribunal is hereby set aside with a direction that the appellant shall take a fresh decision in the matter after giving an adequate opportunity of being heard to the respondent No.1, by ignoring the order of amendment made on 30.1.1995. There shall be no order as to costs.

*/Mohandas